

1  
2  
3  
4  
5  
6  
7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 ALBERT B. ZUNIGA,

11 Petitioner,

12 v.

13 KING COUNTY SHERIFF'S  
14 OFFICE,

15 Respondent.

CASE NO. C22-0048JLR

ORDER ADOPTING REPORT  
AND RECOMMENDATION

16 Before the court is United States Magistrate Judge Michelle L. Peterson's report  
17 and recommendation ("R&R") (R&R (Dkt. # 12)) and Petitioner Albert B. Zuniga's  
18 objections thereto (Obj. (Dkt. # 14)). Having carefully reviewed the foregoing, all other  
19 relevant documents, and the applicable law, the court ADOPTS the Report and  
20 Recommendation (Dkt. # 12) and DISMISSES Mr. Zuniga's petition for a writ of habeas  
21 corpus against Respondent King County Sheriff's Office ("KSCO") without prejudice  
22 and without leave to amend.

1 A district court has jurisdiction to review a Magistrate Judge's report and  
2 recommendation on dispositive matters. Fed. R. Civ. P. 72(b). "The district judge must  
3 determine de novo any part of the magistrate judge's disposition that has been properly  
4 objected to." *Id.* "A judge of the court may accept, reject, or modify, in whole or in part,  
5 the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1).  
6 The court reviews de novo those portions of the report and recommendation to which a  
7 party makes a specific written objection. *United States v. Reyna-Tapia*, 328 F.3d 1114,  
8 1121 (9th Cir. 2003) (en banc). "The statute makes it clear that the district judge must  
9 review the magistrate judge's findings and recommendations de novo if objection is  
10 made, but not otherwise." *Id.*

11 Magistrate Judge Peterson recommends denying the habeas petition and  
12 dismissing the action because Mr. Zuniga attempts to raise constitutional claims that "are  
13 more properly raised in an action under 42 U.S.C. § 1983," such as the one he has  
14 pending in this district, which covers similar ground. (*See* R&R at 2 (citing Proposed  
15 Compl., *Zuniga v. Schenck, et al.*, C22-0047TL-SKV (Dkt. # 9-1).) Other claims Mr.  
16 Zuniga attempts to raise pertain to his ongoing state court criminal proceedings. (*See id.*)  
17 Magistrate Judge Peterson recommends denying Mr. Zuniga's petition and dismissing  
18 this matter as to those claims because deciding them would require the court to interfere  
19 in the state court criminal proceedings, which federal courts decline to do "absent  
20 extraordinary circumstances." (*See id.* (citing *Younger v. Harris*, 401 U.S. 37 (1971).)  
21 Magistrate Judge Peterson did not find that Mr. Zuniga alleged such extraordinary  
22 circumstances. (*Id.*)

1       The court has reviewed Mr. Zuniga’s petition for writ of habeas corpus (Pet. (Dkt.  
2 # 11)), the Report and Recommendation, Mr. Zuniga’s objections, and his “motion for  
3 further consideration and clarification of Defendants’ alleged misconduct,” which the  
4 court construes as supplemental memorandum in support of his objections (*see* Suppl.  
5 Mem. (Dkt. # 17)). Mr. Zuniga’s submissions are difficult to parse but he appears to  
6 raise only one objection to dismissal that was not addressed by the reasoning contained in  
7 Magistrate Judge Peterson’s Report and Recommendation. Specifically, Mr. Zuniga  
8 contends that Magistrate Judge Peterson “misconstrue[ed] his [constitutional] claims” as  
9 relating only to the First, Fifth, Sixth, and Eighth Amendments when he intended to  
10 allege violations of each and every Amendment to the U.S. Constitution. (*See* Obj. at 6.)  
11 Thus, the court reviews de novo Mr. Zuniga’s constitutional claims and his objection that  
12 they were misconstrued by Magistrate Judge Peterson. (Obj. at 6); *see Reyna-Tapia*, 328  
13 F.3d at 1121.

14       Contrary to Mr. Zuniga’s summation, Magistrate Judge Peterson construed his  
15 habeas petition as raising only “First and Eighth Amendment claims.” (*See* R&R at 2.)  
16 Liberally construed, however, Mr. Zuniga may have also meant to allege violations of the  
17 Fourth and Fourteenth Amendments. (*See* Pet. 3-4 (alleging a “fraudulent arrest, staged  
18 set-up,” “illegal incarceration,” and “prosecutorial misconduct, vindictive prosecution,  
19 and malicious prosecution”).) To the extent Mr. Zuniga intended to allege violations of  
20 other constitutional provisions, he failed to do so in his petition (*see id.*) and he may not  
21 assert those claims now because “[i]ssues raised for the first time in objections to the  
22 magistrate judge’s recommendation are deemed waived.” *Williams v. Ryan*, No. CV-18-

1 00349-TUC-RM, 2019 WL 4750235, at \*5 (D. Ariz. Sept. 30, 2019) (quoting *Marshall v.*  
2 *Chater*, 75 F.3d 1421, 1426 (10th Cir. 1996)) (internal quotation marks omitted).

3       Regardless of which constitutional provisions Mr. Zuniga intended to seek relief  
4 under, however, any such claim fails for the reason articulated by Magistrate Judge  
5 Peterson with respect to his First and Eighth Amendment claims: they are more properly  
6 raised in the separately filed civil rights action he has pending in this district. (*See* R&R  
7 at 2; *see also* Proposed Compl. (alleging constitutional violations by KSCO and other  
8 defendants).) Mr. Zuniga’s constitutional claims also fail for the independent reason that  
9 he alleges no supporting facts in his petition that raise his “right to relief above the  
10 speculative level.” *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Indeed,  
11 the few allegations Mr. Zuniga does include are the sort of “unadorned, the-defendant-  
12 unlawfully-harmed-me accusation[s]” that do not suffice to state a claim for relief. *See*  
13 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

14       Further, Mr. Zuniga does not raise specific objection to Magistrate Judge  
15 Peterson’s recommendation for dismissal based on the overlap between his petition and  
16 his ongoing criminal proceedings in state court. (*See generally* Obj.; *see also* R&R at 2.)  
17 Thus, the court need not review Magistrate Judge Peterson’s recommendation for  
18 dismissal on that basis de novo. *See Reyna-Tapia*, 328 F.3d at 1121. After examining  
19 the record, the court finds Magistrate Judge Peterson’s reasoning persuasive on that point.  
20 (*See* R&R at 2). Mr. Zuniga will not be able to cure this deficiency, or the other grounds  
21 for dismissal identified by Magistrate Judge Peterson and adopted by the court, by  
22 alleging additional facts. Thus, the court finds that amendment would be futile and that

1 Mr. Zuniga's petition should be DISMISSED without prejudice but without leave to  
2 amend. *See Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000) (noting leave to amend  
3 need not be granted when “the pleading could not possibly be cured by the allegation of  
4 other facts” (quoting *Doe v. United States*, 58 F.3d 494, 497 (9th Cir. 1995))); *see also*  
5 Fed. R. Civ. P. 15(a)(2) (requiring that leave to amend be “freely give[n]” only “when  
6 justice so requires”).

7 For the foregoing reasons, the court ADOPTS the Report and Recommendation  
8 (Dkt. # 12) in its entirety. Mr. Zuniga's habeas petition (Dkt. # 11) is DENIED, and this  
9 action is DISMISSED without prejudice but without leave to amend. Because the court  
10 dismisses this action, all of Mr. Zuniga's pending motions—including his motions for  
11 extradition to Russia (Dkt. # 13); to seal his habeas petition (Dkt. # 15); regarding  
12 transfer to a Washington State hospital (Dkt. # 16); and to incorporate by reference the  
13 records from specified cases in the Fifth Circuit (Dkt. # 19)—are DENIED as moot. The  
14 Clerk is DIRECTED not to accept further filings from Mr. Zuniga other than a notice of  
15 appeal.

16 Dated this 28th day of March, 2022.

17  
18 

19 JAMES L. ROBART  
20 United States District Judge  
21  
22